IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 1429 /2004

1. Mansukh, son of Shri Bisruram Sahu, aged about 44 years.
2. Ravikant, son of Shri Mansukh Sahu, aged about 22 years.
3. Puskarkaran, son of Shri Mansukh Sahu, aged about 18 years.

All residents of Gram Baihaar Post Arang, Tahsil & District Raipur.

PETITIONERS

VS

1. Bisruram Sahu, son of Late Ganeshram Sahu, aged about 76 years, Occupation Farmer, resident of Gram Baihaar, Post Arang, Tahsil and District Raipur.
2. Iswar, son of Shri Bisru Ram Sahu, aged about 40 years, resident of Gram Baihaar, Post Arang, Tahsil and District Raipur. (Formal)
3. State of Chhattisgarh, through the Collector, Raipur.

RESPONDENTS

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

The humble petition of the Petitioners above named:-

MOST HUMBLY SHOWETH:

1. **PARTICULARS OF THE PETITIONERS**:
   As above in the cause title.
2. **PARTICULARS OF THE RESPONDENTS**:
   As above in the cause title.

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1429 of 2004

Mansukh and others

- Versus -

Bisruram Sahu and others

POST FOR ORDER ON 2nd.07.2004

Sd/-
L.C.BHADOO
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.1429 of 2004

Mansukh and others

- Versus -

Bisruram Sahu and others

Present: -

Mr. B.P. Sharma, Advocate: For the petitioners

Mr. U.N.S. Deo, Govt. Advocate: For the State/respondent No.3

Before: Hon'ble Shri Justice L.C. Bhadoo

O R D E R

(Passed on 2nd July, 2004)

1. The petitioners have preferred this writ petition under Article 227 of the Constitution of India being aggrieved by the order dated 27.04.2004 passed by the 4th Additional District Judge, Raipur, in Civil Miscellaneous Appeal No.66/2003, whereby the learned Additional District Judge dismissed the appeal of the petitioners herein and affirmed the order dated 21.10.2003 passed by the 9th Civil Judge, Class-II, Raipur, in Civil Suit No.38-A/2003, by which the learned Civil Judge allowed the application of respondent No.1 herein filed under Order 39 Rules 1 & 2 of the Code of Civil Procedure and restrained the petitioners herein not to disturb the peaceful possession of respondent No.1 herein and not to dispossess him from the disputed land.

2. Briefly stated facts leading to filing of this writ petition are that the petitioners and respondents No.1 & 2 are closely related persons. Petitioner No.1 is the son of respondent No.1 and petitioners No.2 & 3 are grand sons of respondent No.1 and respondent No.2 is also son of respondent No.1. Respondent No.1 herein filed a civil suit before the 9th Civil Judge, Class-II for permanent injunction mentioning therein that he received 23 acres of agricultural land of Village: Baihaar in succession and thereafter, he purchased 20 acres of land of Village: Rasni and partitioned the said lands of

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Village: Baihaar & Village: Rasni and each of the persons i.e. respondent No.1, petitioner No.1 and respondent No.2 herein got 14 acres of land in that partition and out of 14 acres of land of his share, he donated 6.22 acres of land of Village: Baihaar to one Kabir Kalyan Samiti, Baihaar and the remaining land bearing Khasra No.1281/1 area 2.30 acres was in his possession. However, on 16.07.2003, he came to know that his sons namely, defendants No.1 & 4 (petitioner No.1 & respondent No.2 herein) got that land mutated in their names in the revenue records and on the strength of that revenue record, defendants No.1 & 4 i.e. petitioner No.1 & respondent No.2 herein, want to dispossess him from that land. In order to restrain them, respondent No.1 herein filed an application for issuance of temporary injunction along with the suit. Petitioner No.1 and respondent No.2 herein filed their reply in which they stated that their father has not donated the agricultural land admeasuring 6.22 acres to Kabir Kalyan Samiti, but the plaintiff (respondent No.1 herein) along with respondent No.2 is cultivating that land and as far as the land admeasuring 2.30 hectares bearing Khasra No.1281/1 is concerned, that land was voluntarily transferred by respondent No.1 herein to petitioners No.2 & 3 herein and thereafter, that land has been transferred in their names in the revenue records and they are cultivating the same.

3. Learned trial Court as well as the appellate Court reached the conclusion that in view of the averments made by the plaintiff and affidavits of Bachhu, Shravan, Shiv Kumar & Latel, the plaintiff is cultivating that land and the same has been given to them for cultivation by the plaintiff. The learned appellate Court further observed that the land in question is self-acquired property of respondent No.1 herein as the same was purchased by him in the year 1964 through a registered sale deed and further the defendants have not denied the averments made by the plaintiff that the partition of the agricultural land took place between the three. The learned Civil Judge further observed that when the plaintiff (respondent No.1 herein) came to know about the resolution of the Panchayat dated 07.12.2002, he lodged a report in the Police Station: Arang with the allegation that defendant No.1 (petitioner No.1 herein) obtained his signature by committing fraud and deceit

on him. Therefore, the plaintiff filed an appeal before the Sub Divisional Officer against the revenue entries, which were made in the name of defendants No.2 & 3 i.e. petitioners No.2 & 3 herein, in which the learned S.D.O. granted stay against those entries.

4. While considering the prima facie case, the learned appellate Court further observed that mere entries in the revenue records does not confer legal right in favour of those persons in whose name the entries were made. It was further observed that irrigation book stands in the name of the plaintiff in which he paid Rs.525/- as irrigation charges and further the Sarpanch of Village Panchayat Baihaar namely, Chandrakant Banjare and Up-sarpanch Shivlal Sahu and other villagers have written a letter that the land in question is in possession of the plaintiff. Therefore, the trial Court granted injunction in favour of respondent No.1 herein considering the prima facie case, balance of convenience and irreparable loss in his favour, which came to be affirmed by the first appellate Court.

5. Even though, supervisory jurisdiction of this Court under Article 227 of the Constitution of India is wide enough, but at the same time while exercising the jurisdiction under Article 227 of the Constitution of India, the Court can disturb the finding of the sub-ordinate Court only when (a) that Court has exercised a jurisdiction not vested in it by law; or (b) to have failed to exercise the jurisdiction so vested in it; or (c) to have acted in exercise of jurisdiction illegally or with material irregularity; or (d) the order of the sub-ordinate Court is patently perverse and contrary to the settled principles of law or record and if the same is allowed to exist/continue that will amount to failure of justice.

6. In view of the above principle of law, if we look into the impugned orders passed by the appellate Court i.e. the Additional District Judge as well as by the Civil Judge, I am of the opinion that both the orders are based on sound legal principles. While granting temporary injunction, the Court is required to see that as to whether the plaintiff is in possession of the disputed property. In this case, the persons who are cultivating the land in question on behalf of respondent No.1 have categorically stated in their affidavits

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that they are cultivating the land on behalf of respondent No.1. Sarpanch, Up-sarpnach and other villagers of Village: Baihaar have stated that the land in question is in possession of respondent No.1 and that land was purchased by respondent No.1 in the year 1964 through a registered sale deed. Respondent No.1 herein also submitted receipt of the payment of irrigation charges. His allegation is that his sons i.e. petitioner No.1 and respondent No.2 herein obtained his signature on blank papers by committing fraud on him against which when he came to know he has filed an appeal before the S.D.O. and the S.D.O. has stayed the order regarding the revenue entries made in favour of petitioners No.2 and 3 herein. Based on the above material, both the Courts have reached the conclusion that respondent No.1 herein (plaintiff in the suit) has a strong prima face case in his favour as also balance of convenience and irreparable loss. Therefore, the orders of both the Courts are based on material available on record and also based on sound legal principles. In the circumstances, it cannot be held by any stretch of imagination that the impugned order is in any way perverse or contrary to the law and material available on record or the Courts below have failed to exercise the jurisdiction or exercised the jurisdiction with illegality and material irregularity.

7. In the result, this writ petition has no force and the same is devoid of any merit and it is liable to be dismissed. The writ petition is hereby dismissed at the admission stage itself.

Sd/-
L.C.BHADOO
Judge

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